IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6481 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

MOHANBHAI SHIVJIBHAI GORANI

Versus

SUPERINTENDING ENGINEER (O&M)

Appearance:

MR BN PATEL for Petitioner

MS MAYA DESAI FOR MR MD PANDYA for Respondent No. 1, 2

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 19/03/99

ORAL JUDGEMENT

#. The petitioner seeks a direction on the respondent to appoint him as a Junior Assistant in the Himatnagar Circle on permanent basis and, in the alternative, to declare that his termination on 25-5-1986 from service was null and void and that he should be treated on duty and be given backwages.

#. According to the petitioner, he was appointed as

apprenticeship clerk in the office of the respondent No.2 under the control of the respondent No.1 at Himatnagar and the apprenticeship agreement was duly registered on 12-1-1983. He had worked satisfactorily as Commercial Apprentice from 13-9-82 to 12-9-1983 under the Rural Sub-division of Himmatnagar (O & M Div.). The case of the petitioner is that a policy was adopted to absorb the commercial trade apprentices, by the respondent No.2 Board, as permanent employees and for this purpose, appointments were to be made from a waiting list. This policy was reflected in the circular dated 13-2-1986 which is at Annexure-B to the petition. As per that policy, the petitioner who was in the waiting list was required to be appointed as a Junior Assistant in view of the fact that there were already as many as 16 vacancies. Since the petitioner would have crossed the maximum age limit, prescribed for the purpose for such appointment, on 26th December, 1986 when he was to attend the age of 27 years, he moved the respondent No.2 Board for an appointment as per the declared policy but that was not done due to the callous approach of the respondents. The petitioner was at the top of the waiting list and even if one appointment was to be made, the petitioner's turn would have come. The alternative contention raised in the petition is that after completion of apprenticeship, the petitioner was appointed on temporary basis as Junior Assistant by the respondent No.1 from time to time and during the period from 9-7-85 upto 25-5-86, he had worked for 256 days. According to the petitioner, his service therefore could not have been terminated in contravention of the provisions of Section 25 F of Industrial Disputes Act, 1947 and as no retrenchment compensation was paid to him, his termination from service should be treated as null and void. Further more, as per the Circular which was issued by the respondent No.2 Board on 7-11-1986, there was direction given not to terminate the services of the work charge or NMR employees who had completed 90 days of work pursuant to an injunction order dated 13-11-1984 passed by the Industrial Tribunal.

#. The case of the respondents is that the petitioner had no right to get an appointment as Junior Assistant merely on the basis that his name was in the waiting list. It is stated that there was no vacancy available at the relevant time for making petitioner's appointment. The petitioner had become over-age and therefore he was ineligible for appointment as per the rules prescribed in the policy. It is also the case of the respondent that there was no question of any retrenchment as envisaged under Section 25 F of the Industrial Disputes Act, 1947 since the petitioner's appointment had come to an end as

per the stipulation contained therein as contemplated by Section 2(oo) (bb) of the said Act.

#. The learned counsel for the petitioner strongly contended that there were 16 clear vacancies and since the petitioner had successfully completed his apprenticeship and was in the waiting list, he ought to have been appointed as Junior Assistant as per the policy declared by the respondent Board in its Circular at Annexure-B to the petition. He contended that there was sufficient time while the petitioner remained on the waiting list to appoint him before he completed the upper age limit prescribed in the policy and for no fault on the part of the petitioner, he was denied the appointment which has resulted in grave injustice to him. The learned counsel also argued that as per the break up given at Annexure-F to the petition, the petitioner had worked for 256 days in a period of less than one year and therefore his services could not have been terminated without following the due procedure under Section 25 F of the said Act of paying retrenchment compensation. His termination being void, he should be declared to have continued in employment.

#. The policy declared in Circular dated 13-2-1986, did not give any right to appoint all those who are in waiting list. The policy was devised in view of the fact that a large number of apprentices were available for being engaged on a regular basis on the establishment of the Board as Junior Assistants. It was specifically mentioned in that policy that all the future vacancies in the Board should be filled in from the waiting list of commercial trade apprentices who had passed the trade test and who were within the age limit. It was also mentioned in the said policy that two years grace period was to be allowed over the prescribed age limit. According to this decision, the maximum age limit was 27 years for the unreserved candidates and 32 years age limit for the SC / ST candidates. It was also specifically provided in the policy that no NMR / work charge appointment of Junior Assistant should be made at all and should such appointment became necessary, prior approval of Head Office for engagement of NMR / work charge should be sought and where such approval is given, appointments should be made only from the waiting list of commercial trade apprentices who have passed trade test examination and are within the relaxed age criteria. Thus, under the policy if the candidates were within the relaxed age criteria, they could have been appointed as Junior Assistants when the vacancies were to be filled in and also on temporary basis instead of appointing NMR /

W. basis. Even as per this policy, any person in the waiting list who had crossed the maximum age limit stood disqualified from appointment. The right to be appointed existed only if he was within the prescribed age and if any vacancy was to be filled in.

#. The respondents in their affidavit in reply while dealing with the contention that as many as 16 vacancies had arisen on the promotion of Junior Assistants, have stated in Para 3 & 4 that pursuant to the decision of the Board, options were invited due to bifurcation of Mehsana and creation of Palanpur O & M Circle office and 19 Junior Assistants had exercised their options. The Sixteen posts of Junior Assistants which fell vacant due to promotions, Junior Assistants from other circle who had exercised their options to be posted at the place of option were given posting. Thus, there was no vacancy available in this Circle against which the petitioner could be appointed. It would be therefore appear that there was no vacancy against which the petitioner could have been appointed from the waiting list at the relevant time when he completed the maximum age of 27 years on 27th December, 1986 as stated by him in Para 5 of the petition. Successful completion of apprenticeship did not give any legal right to the petitioner for being appointed as Junior Assistant as stated in Para 9 of the order appointing him as apprentice. He also did not have any legal right of being appointed to the said post after completion of maximum age prescribed in the policy at Annexure B to the petition. Therefore since no right of the petitioner is violated, he is not entitled to a direction on the respondents to be appointed as a Junior Assistant.

#. The alternative contention that since the petitioner had completed 256 days in a year, his termination should be treated in violation of Section 25 F of the Industrial Disputes Act is wholly misconceived. The petitioner had not made any such claim by issuing a demand before seeking mandamus but even apart from that, the definition of the word retrenchment contained in Clause "OO" of Section 2 of the said Act excluded, as provided by Sub cluase (bb) the termination of service of a workman as a result of non renewal of contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under stipulation contained therein. Appointment of the petitioner as Junior Assistant was on purely a temporary basis and was for a specific period and after the end of the stipulated period which came to end lastly on 25-9-1986, there was no question of there being any retrenchment and hence

there was no question of any retrenchment being in violation of Section 25 F of the said Act. Claim of the petitioner is therefore thoroughly misconceived. The petition is therefore rejected. Rule is discharged with no order as to costs.

Date : 19-3-1999 (R. K. Abichandani, J.)

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